

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

Case Number: 14-CR-102-S

GREGORY KWIATKOWSKI
Defendants.

**DEFENDANT GREGORY KWIATKOWSKI'S STATEMENT REGARDING
SENTENCING FACTORS AND OBJECTION TO THE PRESENTENCE REPORT**

DATED: Buffalo, New York
November 21, 2018

Respectfully submitted,

JUSTIN D. GINTER, ESQ.
LIPSITZ GREEN SCIME CAMBRIA LLP
Attorneys for Defendant
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TO: AARON J. MANGO, ESQ.
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Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

LINDSAY M. MAZA
UNITED STATES PROBATION OFFICER
2 Niagara Square
Buffalo, New York 14202

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

AFFIDAVIT
Case No: 14-CR-102-S

Vs.

GREGORY KWIATKOWSKI,
Defendant.

STATE OF NEW YORK)
COUNTY OF ERIE) ss
CITY OF BUFFALO)

JUSTIN D. GINTER, ESQ. being duly sworn, deposes and says:

1. I, along with Paul J. Cambria Jr., Esq., and Herbert L. Greenman Esq., represent the defendant Gregory Kwiatkowski.

2. On December 1, 2016, Gregory Kwiatkowski pled guilty before United States Magistrate Judge Jeremiah J. McCarthy to a one count Superseding Misdemeanor Information charging him with Deprivation of Rights Under Color of Law , in violation of 18 U.S.C. §242.

3. The plea agreement provided, *inter alia*, that the government and the defendant agree that Guidelines §§ 2H1.1(a)(3)(A) and 2H1.1(b)(1) apply to the offense of conviction for each victim and provide for a combine adjusted offense level of 20.

4. A presentence report was prepared by the United States Probation Department for the Western District of New York. In the presentence report, the probation officer indicated that the combine adjusted offense level is 22, further applying Guidelines § 3A1.3.

5. Defendant hereby respectfully objects to the application of Guidelines § 3A1.3 included in the PSR and requests that the calculation in the plea agreement be adopted.

RESTRAINT OF VICTIM

6. In paragraph 16 on page 5, the presentence report indicates that during the course of transporting J.W. to the station house, the defendant and another officer struck J.W. in the back of his head five (5) or six (6) times and kned him twice in the gut, causing him to fall to his knees. Absent from this paragraph is any allegation that J.W. was restrained at this time.

7. Further, the plea agreement is devoid of any admissions and/or information supporting this claim.

8. Assuming arguendo, that J.W. was restrained in the course of the offense, that restraint was the result of a lawful arrest. J.W. among others, had been arrested for numerous BB gun shootings between the areas of Cheektowaga, Amherst and Buffalo.

9. The purpose of the restraint enhancement is when the act of physical restraint adds to the basic crime, not whereas here the victim is restrained as part of a lawful arrest by the officers.

10. Consequently, Defendant hereby respectfully objects to the application of Guidelines § 3A1.3 included in the PSR and requests that the calculation in the plea agreement be adopted.

WHEREFORE, your deponent prays that this Court rule accordingly.

/s/Justin D. Ginter
JUSTIN D. GINTER, ESQ.

Subscribed and sworn to before me this
21st day of November, 2018.

s/Kristina Drewery
Commissioner of Deeds
Qualified in Erie County
My Commission Expires December 31, 2018

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

Case No: 14-CR-102-S

v.

GREGORY KWIATKOWSKI,
Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2017, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system.

I hereby certify that on November 21, 2017, a copy of the foregoing was also delivered to the following via CM/ECF:

AARON J. MANGO, ESQ.
Assistant United States Attorney
138 Delaware Avenue
Buffalo, New York 14202

DATED: Buffalo, New York
November 21, 2017

s/ April L. Kelly
April L. Kelly